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MAJORITY SHAREHOLDERS POWER AND MINORITY SHARHOLDER'S RIGHT: AN ANALYSIS

AUTHORED BY - ANURAG SINGH[1]

ABSTRACT

In the day-to-day operations of a corporation, decisions impacting the administration of the business must be made, and these decisions are often decided by the majority of members. The interests of the majority stakeholders may sometimes conflict with those of the minority stockholders throughout this decision-making process. If the decisions taken in such a situation only serve the interests of one group and not the organization's overall larger interests, the minority members whose rights may have been violated may protest the action. How to protect minority stakeholders within the framework of commercial activity is one of the most difficult topics in modern company law. The objective would be to strike a balance between the company's actual control and the minuscule individual shareholders' interests. Palmer accurately said that, in terms of shareholder rights, "a proper equilibrium of the privileges of majority and minority shareholders is quintessential for the smooth functioning of the company." It is reasonable to anticipate that any choices made in a company's affairs would be made with the ideals of natural justice and fair play in mind. Minority shareholders' interests must be safeguarded in the event that this is not done. This study attempts to analyze the acts of majority shareholders which in turn resulting to oppression and mismanagement towards minority. Additionally, this study also examines the exception given in Landmark ruling of English court in Foss vs. Horbottle,1934. This study concludes with resorting solutions for minority shareholders against the oppressive acts of major

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stakeholders in the corporate set up.

Keywords: Majority, minority, oppression, mismanagement, company, balance, etc

[A] INTRODUCTION

"You do, in a democracy, have to win by a majority." Similar to a large group of people, a company similarly adheres to the decisions made by the majority of its members. The dissident minority must comply with any such rulings unless and until he can show that the majority's authority has been abused. The basic guideline guiding how a company's operations are conducted is "the will of those in power prevails or the majority is supreme." A company's majority owners often have the authority to impose their choices on the minority shareholders. They occasionally abuse their authority to violate minority rights. In the seminal decision of Foss. v. Harbottle2, the court established the fundamental rule of not interfering with a company's internal management. By a simple majority or a three-fourths vote, the members approve resolutions on a variety of topics. A resolution becomes enforceable after it has received the necessary majority of votes from the company's members. Because each member implicitly consents to bowing down to the will of the majority of the company members upon joining, the court will often not interfere to safeguard the minority interest impacted by the resolution. Since the company is a separate legal entity with its own personality, its shareholders (members) alone do not have the right to sue the offender in the event that the business is damaged. The objective must be to strike a balance between the company's effective control and the small individual shareholders' best interests3.

In the opinion of ***Palmer***[4]: "A proper balance of the rights of majority and minority shareholder's is essential for the smooth functioning of the company"[5]. Therefore, there are many measures for safeguarding of the rights of investors in corporations in the current corporations Acts. The purpose of these laws is to compel persons in charge of a firm to execute their authority in

[2]Foss. v. Harbottle, (1843) 2 Hare 461, 67 ER 189
[3] N.A. Bastin, "Minority Protection in Company Law" (1968)JBL 320
[4] Palmer's Company Law, 24th Edition
[5] Clive M. Schmitthoff and Curry (Eds.), Palmer's Company Law (20th Edn 1959) 492 on Majority and Minority Rights.

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accordance with specific equitable treatment and fair play principles.[6]

[B] STATEMENT OF THE PROBLEM

1. A person is regarded as the majority shareholder if they own over fifty percent of the company's shares. With a majority ownership position in the company comes great power, especially if those shares come with voting privileges.
2. A minority shareholder, on the other hand, is a person who has no more than fifty percent of the company's equity. A minority holder is not eligible for the advantages enjoyed by a majority holder. Rarely do minorities have the opportunity to benefit from a company's activities, such as via dividends or the potential to resale their shares at a profit. Minority shareholders may not be given the right to vote and might not be given any administrative authority over the business.
3. Let's construct a simple scenario to act as a controlling shareholder. In another universe, Mr. Stark, who owns approximately 55 percent of the Galaxy Company's stock, is present. Mr. Star Lord owns 8% of the business, Miss Black Widow 9%, Mr. Roger 13%, and Miss Pott possess the remaining shares, with Mr. Thor holding 7% of the total.
4. In this case, Mr. Stark has the bulk of the stocks in comparison to the other stockholders, as can be shown. He may have a big effect on the company. Since they own less than fifty percent of the company's equity, the remaining people are regarded as minority shareholders. Since Mr. Stark may have significant influence over The Galaxy Company, especially if the shares he holds are voting shares, Mr. Stark is consequently primarily in charge of managing it.
5. 5. As a consequence, the participants as a whole have good influence over how the organization exercises its rights and generally manages its business, and the minority stakeholders are obligated to obey the majority's decision. However, there is a danger that individuals with the majority vote will also have a predisposition to oppress the minority shareholders by abusing their disproportionately large authority.
6. Are the present companies Act, 2013 is enough to safeguard the privileges of Minority Shareholders in Company?

[6] 6 Hogg vs. Cramphorn Ltd., 1967 Ch 254

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[C] RESEARCH HYPOTHESIS

The study's fundamental assumption is that while if majority and minority shareholders interact in a similar way to how they do in the corporate world, all democratic choices are made and an organization is governed according to the majority rule, which is accepted as true and justifiable. The decision-making process, which is governed by the majority rule, typically disregards the views of minority investors. The majority rule is crucial to a corporation's governance, and courts "now usually are unlikely to intervene at the instance of the stakeholder in issues concerning internal administration."

[D] SIGNIFICANCE OF THE STUDY

Every person who has a share of equity has the right to vote on every issue that is presented before the company, according to Section 47 of the Companies law of 2013. The acknowledgment of the member's right to cast a vote is influenced by both the right to assets and the shareholder's flexibility in exercising that right in line with his or her interests and preferences. To be approved by the meeting, a special resolution has to get support from 3/4 of these votes. Consequently, whether the legislation or the articles ask for a special resolution for any reason, a 3/4th majority is required and a mere majority is inadequate.

Any decision taken by the majority of stakeholders at a duly convened and held annual general meeting with respect to an issue which may lawfully be discussed by the business shall be binding upon the minority and the company. A Shareholders Agreement can be used to control and address any decisions made by anybody that would jeopardize the interests of the firm. Similar to any contract, it is crucial to have all discussions open before signing one in order to prevent issues later on. The Shareholder’s Agreement is a two-sided contract that benefits the Company as well as both of its partners.

When a business can achieve a healthy balance between its main and minority owners, business operations function more smoothly, which boosts revenue. Both of these shareholders are internal

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stakeholders who support the operation of the entire business. Therefore, a company's internal environment must be maintained for it to run effectively.

[E] RESEARCH OBJECTIVES

The study has the following stated objectives:

1. To Identity the vitality and relevance of majority shareholders power and study its co- relation to minority shareholders right.
2. To highlight significance of company's democratic structure in the Indian scenario and look into the issues and challenges in protection of minority shareholder's rights.
3. To analyze best legal practices existing to prohibit oppression and mismanagement in company caused by majority shareholders.
4. To identify ways by which the interest of minority shareholders can be protected in the corporate world.

[F] RESEARCH METHODOLOGY

The methodology suggested shall be basically Doctrinal in nature. The objectives of the research shall be explored using analytical methods. The study mainly relies on national laws, international agreements, and policy documents. The pertinent laws and regulations that are in effect throughout India and other countries must also be carefully reviewed. Using a modified version of the doctrinal research methodology, the conclusion will be reached by looking at and analyzing legal concepts and principles. In order to recommend and determine if a model law suited for safeguarding of outnumbered rights in India may be introduced in India, it is also necessary to examine various legislations relevant to the safeguarding of minority rights in other nations. Additionally, this study examines the company's democratic structure, the *Foss v. Harbottle* case, the exception to this rule, and the law that safeguards the interests of the company's minority owners.

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[G] LITERATURE REVIEW

STATUTORY PROVISIONS

The Company Act of 2013 makes an effort to preserve a good balance between the interests of the minority and majority stakeholders, and it does so occasionally by establishing a number of clearly defined minority rights that serve to safeguard the minority shareholders. However, the 2013 Act[7] provides a number of rights to shareholders that safeguard minority stockholders. Here are some of them-

Section 48 - variation of class rights[8]: The rights attached to the issued shares may be altered with the consent of a 3/4th majority of the class's owners when the issued shares are divided into various classes in line with MOA/AOA. In situations where the classes are created and the rights are changed with the approval of the necessary majority, the holder of at least 10% of the originally issued shares of that class who has not consented to the variations can apply to the tribunal for an annulment of the variation under section 48(2) of the act. A corporation faces a minimum punishment of $25,000, a maximum fine of $5 lakh, a corporate officer serving a minimum of 6 months in jail, or both, if it disobeys a court decision.

Section 213- Request for investigation[9]: The tribunal may be asked by the following parties to investigate the company's affairs: a) Businesses with stock capital i) a minimum of 100 members; ii) a minimum of one-tenth of the voting power inside the company; and b) in the absence of share capital: i) Applications may be submitted by at least one-fifth of the members.

Section 230- Scheme of compromise or arrangement: It permits negotiations with creditors and members and protects the minority. A tribunal ruling may also include an exit offer to dissident shareholders in order to fully carry out the conditions of the C & A, according to section 230(7)(c) and (e). If the C & A results in a variation of a shareholder's rights, section 48's provisions must be followed.

[7] The Companies Act, 2013
[8] The Companies Act, 2013
[9] The Companies Act, 2013

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Section 241-Oppression & Mismanagement[10]: Where section 241 is relevant, the majority rule principle is not applicable. If a shareholder claims that the company's business activities are being run unfairly to some shareholders, including himself, or against the well-being of the public, he may file a petition with the tribunal under section 241 to make his complaint.

Section 235-Rights of dissentient shareholders under take-over bids: 90% of the shareholders have accepted the offer for the acquisition of the shares, and the offer's maker may take the remaining 10% on the same terms. Dissenting stockholders will get notice outlining the conditions. They have the right to petition a tribunal not to allow the acquisition of their shares under these conditions. Tribunal has the right to issue any orders it sees suitable.

Class Action; Section 245: A specific request for relief submitted to the tribunal by a set of individual members on the basis that the organization's affairs are being handled in a manner that is harmful to the best interests of the business and its members. The Tribunal may make whatever directions it deems appropriate[11].

A holistic study on minority right protection in India with reference to all major legal, regulatory and civil society initiatives is yet to be made more stringent. In addition, available literature has not made a comprehensive study of India's efforts to protect minority rights with reference all existing related international regimes.

[H] CHAPTERISATION

The research is divided into the following seven parts excluding the present introduction:

Chapter 1: Introduction

Chapter 2: Majority Rule and Minority Rights

Chapter 3: Does the Companies Act 2013 balances the equation?

Chapter 4: An examination of the best legal procedures in each country for defending the rights of minority shareholders.

Chapter 5: Issues and Challenges associated with protection of Minority Shareholders Right in India.

[10] Supra
[11] Avtar Singh, Company Law 17th Ed., EBC

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Chapter 6: Judicial responses on Minority rule and Minority Rights

Chapter 7: Conclusions and Suggestions

CHAPTER 1: INTRODUCTION

Decisions about a firm are frequently made with the majority of shareholders' interests in mind. All decisions, whether they relate to management or money, are made using the majority. The judgements made by the majority are seen to be just, fair, and beneficial to the business. The viewpoints of minority shareholders, however, are not always taken into consideration. They have little influence over how the corporation is operated, thus their rights and interests are often disregarded. By defending the best interests of minority shareholders, the business world strives to preserve a balance between effective and efficient control over the organization.

A corporation can only be successful if all of its workers accept one another's viewpoints and methods of operation while working together to realize a common objective. The majority of shareholders may sometimes take over the interests and rights of the minority stakeholders, which may lead to biased management inside the organization. Minority shareholders' rights and interests are safeguarded under the 2013 Companies Act. The regulations enacted to safeguard minority shareholders' interests are designed to ensure that companies utilize their authority in a manner that is compatible with the principles of fairness and equality.

In the opinion of ***Palmer***[12]: "A proper balance of the rights of majority and minority shareholder's is essential for the smooth functioning of the company"[13]. Therefore, there are many measures for the safeguarding of the rights of investors in corporations in the current corporations Acts. The purpose of these laws is to compel persons in charge of a firm to execute their authority in accordance with specific equitable treatment and fair play principles[14].

[12] Palmer's Company Law, 24th Edition
[13] Clive M. Schmitthoff and Curry (Eds.), Palmer's Company Law (20th Edn 1959) 492 on Majority and Minority Rights.
[14] 6 Hogg vs. Cramphorn Ltd., 1967 Ch 254

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CHAPTER 2: MAJORITY RULE AND MINORITY RIGHTS

Under Companies Act, 2013 powers have been divide between two parts:-

DIVISION OF POWER

1. Board of Director
2. Shareholders

Stakeholders exercise their power during the annual general meeting, whereas directors exercise their authority at BOD meetings. Even though the general meeting is where the company's legal activities must be carried out, the board of directors is actually given the majority of these rights by the company's constitutional papers, the memorandum of association and the articles of association. Therefore, rather than being actively engaged in the corporate governance process, the members operate as passive investors.

The members may perform certain directorial tasks in specific situations. a circumstance in which the board of directors is unable to resolve a disagreement or when there is insufficient quorum at a meeting. In the authority of Alexander Ward & Co. Ltd v. Samyang Navigation Co. Ltd, the idea of residual authority "in its absence of an effective board" was established. The directors in this case "may exert every authority of the organization which are not by the Regulations or by these rules required to be performed by the organization in general meeting" shall be in charge of managing the company's affairs[15].

They claimed that the firm couldn't file a lawsuit since there were no directors, but the House of Lords set aside this claim. Because it gives shareholders the ability to override a director's

[15] Alexander Ward and Co. Ltd v Samyang Navigation Co. Ltd [1975] 1 WLR 673

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decision, the notion of residual authority is crucial[16]. In a similar case, Foster v. Foster, it was decided that in the absence of directors, members might act as the company's agents to conduct business[17]. The notion of residual authority in this area of law was believed to be difficult to support in the nineteenth century, but all of those beliefs have been disproved by the more recent ruling in Barron v. Potter. In the case of Baron, the absence of one of the directors resulted in the cessation of all business activities. In the given circumstance, Warrington J's decision states that the general meeting of the company has the power to choose a new director as the directors lack the ability to do so[18].

THE MINORITY AND MAJORITY SHAREHOLDERS

A person is regarded as the majority shareholder if they possess over fifty percent of the company's stock. With a majority ownership position in the company comes great power, especially if those shares come with voting privileges. a large majority Shareholders may now take part in significant company decisions. For instance, selecting directors, making corporate decisions, etc. They are able to control the corporation this manner because they have the voting power to do so[19].

A minority shareholder is someone who owns less than 50% of the company's shares, on the other hand. The benefits received by the majority holder are not available to a minority holder. Minority shareholders have little opportunities to profit from a company's activities, such as getting dividends or being able to sell their shares at a profit. The minority shareholder might not be able to vote and has no management authority over the business.

For Instance:- Mr. John, who holds around 55% of the Galaxy Company's stock. Mr. David owns 7% of the company, Mr. Stan owns 8%, Miss Black Widow holds 9%, Mr. Roger owns 13%, and Miss Pitt owns the remaining shares. We can observe that Mr. John owns the majority

[16] D. D. Prentice ibid

[17] Foster v Foster [1916] 1 Ch 532

[18] Barron v Potter [1914] 1 Ch 895

[19] Supra note 2

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of the shares in this case relative to the other shareholders. He might have a significant impact on the business. The remaining individuals are considered minority shareholders since they possess less than 50% of the company's stock.

RULE OF MAJORITY & MINORITY RIGHTS

As a company has no actual existence, it is an artificial entity. It is managed by the directors, but they follow the majority's wishes. The administration of corporate affairs now complies with the majority rule principle. The decision adopted by a large majority of the members is accepted by the directors. The majority members are in charge and are in charge of the organization. The members can approve resolutions on a variety of topics with a simple majority vote or a three-fourths vote. A resolution is enforceable against all of the company's members after it has been approved by a majority. If the company is wronged, the shareholders (members) personally do not have the right to file a lawsuit against the perpetrator since the company is the legal entity with its own personality and can do so[20].

In view of Palmer[21] "The term "the rule in *Foss v. Harbottle*" refers to two separate but related legal doctrines. The first tenet is that if a firm can approve or overlook an internal irregularity through its own internal system, then the court will often not become involved. The second is that, initially, the only legitimate plaintiff in cases where a tort is allegedly done to a corporation is that firm itself. Jenkins LJ reiterated the ruling in *Edwards v. Halliwell* in the following words[22] "This is all that the *Foss v. Harbottle* ruling says. First off, the corporation itself is in all likelihood the rightful plaintiff in regard to a harm that is claimed to have been done to it. For the simple reason that if a simple majority of the company's members approve of what has been done, cadit quaestio, no individual member of the company is permitted to continue an action in respect of that matter where the alleged wrong is a transaction that could be made obligatory on the company by a simple majority of members."

[20] Avtar Singh, Company law, 17th Edition. EBC
[21] Palmer's Company Law, 24th Edition, Para 65-03
[22] AIR 1934 Bom 243: (1934)4 Comp Cas 434

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CHAPTER 3:DOES THE COMPANIES ACT 2013 BALANCES THE EQUATION?

DEMOCRACY IN A CORPORATE SET UP

In a democracy, the majority rules and decides, but the interests of the minority must also be upheld and protected. As a result, democracy requires both minority rights and majority control. In truth, the rights of the minority must be preserved under the present definition of democracy regardless of how different or distant they are from the society at large; otherwise, the liberties of the majority become worthless. In a business, the majority also controls and makes choices, just as in a democratic country. As a result, the shareholders' democracy, similar to that of a democratic country, may significantly contribute to energising the BODs, enhancing business performance, and ensuring that the general public is more involved in the growth of industry. Democracy refers to government that is run by, for, and by the people[23]. In that context, the term "shareholder democracy" refers to the governance of the shareholders, by the shareholders, and for the shareholders in the corporate entity to which the shareholders belong.

CASE LAWS

FOSS V. HARBOTTLE[24]

Court: Court of Chancery

Quorum: Wigram VC, Jenkins LJ

Petitioner: Richard Foss and Edward Starkie Turton

Defendants: Thomas Harbottle & Other's

FACTS OF THE CASE

In September 1835, the Victoria Park Company was founded to purchase 180 acres (0.73 km2) of land near to Manchester. The business's directors and other parties participated in actions that might result in the theft of corporate assets, such as property theft. Richard Foss and Edward

[23] Majority Rule and Minority Protection under Companies Act 1956 with special reference to Foss vs. Harbottle, Dr. Sukhvinder Singh Dari, International Journal of Research (IJR) Vol-1, Issue-9 October 2014 ISSN 2348-6848
[24] [1843] 67 ER 189

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Starkie Turton, two small investors, gave illustrations of the problem. The organization's five directors are Thomas Harbottle, Richard Bealey, Henry Byrom, Joseph Adshead, and John Westhead, according to their information. They constructed their case on the ground underneath. The first defence was the dishonest embezzlement of business funds. The company lacked enough qualified directors to fill up the board, which was the second reason, and there was no office or clerk present, which was the third reason. Due to these facts, the owners were compelled to sue the directors rather than relinquish ownership of the property.

ISSUE IN THE CASE

The question was whether or not the company's members could bring a lawsuit on the company's behalf and whether or not the wrongdoers could be held responsible for their actions.

JUDGMENT OF THE CASE

In the present instance, Wigram VC dismissed the shareholders' claim and came to the conclusion that no individual shareholder or other third party may bring a claim against the business for damages suffered by it since the company and its shareholders are both recognised as separate legal entities. The business must file a lawsuit or take other legal action against any members who have stolen the company's property without permission since the company, not its shareholders, has suffered injury. The two primary norms were therefore effectively established by the court.

The first and most significant rule was known as the "Proper Plaintiff Rule" and it stated that only an organization could file a complaint against the directors or other third parties to enforce its rights in the event the organization was wronged or suffered loss as a result of the deceptive or careless acts of directors or any other outsider. The corporation may only be sued or sued by the company itself because of the "Separate Legal Entity" principle, which regards the business as a separate legal entity from all of its members and forbids members of the organization or other individuals from suing on the organization's behalf.

The second rule, referred to as the "Majority Principle Rule," declared that if the alleged injustice could be confirmed or supported by a 1/3rd majority of members present at the general meeting,

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the court would not become involved. Justice Mellish provided a clear rationale for the aforementioned rule in another case, *Macdougall v. Gardiner*[25]. The norm should be observed, the court said, if the complaint pertains to an action that the majority of the business is legally allowed to do, was taken irregularly but within the parameters of that right, or was taken unlawfully but the majority of the company is suing over it. The only method to settle this is to hold a meeting, at the moment the desired result will be achieved.

In the case of *Rajamundary electric supply co. vs. Nageshwar Rao*[26], it was decided that the court would typically not get involved at the request of a shareholder in internal management disputes and would not interfere with the directors' management of the company as long as they were following the authority granted to them by the company's articles of association. Furthermore, the minority owners often have little redress if the directors are given backing for their choices by the majority shareholders.

CRITICAL ANALYSIS OF THE CASE

Minority shareholders cannot bring such a claim, the court said. It was determined that just one shareholder or someone not connected to the business could not file a case against such conduct against the corporation since the corporation and its stockholders are separate legal entities. Company is a distinct legal entity that may be sued in its own name. As a consequence, the company would be the proper plaintiff in this instance since the tort took place against the corporation. When anything goes wrong, the majority shareholders have the power to act on behalf of the company and decide what legal action will be taken. This clause had a negative impact on minority shareholders since it barred them from filing a lawsuit in the event that anything went wrong. As a consequence, the two rules that the court established were created. The first criteria is known as the "suitable plaintiff rule," while the second is known as the "majority principle rule." The company may file a lawsuit against a particular person under the applicable plaintiff rule for wrongs done to it or losses sustained as a consequence of carelessness or fraud on the part of members or directors. The additional rule, known as the majority principle rule, states that when

[25] (1875) 1 CH D 13
[26] AIR 1956 SC 213

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a judgement can be made or confirmed by a simple majority, the court will abstain from meddling in the internal business of the organization.

JUSTIFICATION AND ADVANTAGES OF THE RULE IN FOSS V. HARBOTTLE

The principle established in *Foss v Harbottle*[27] that the will of the majority triumphs serves as justification for the rule. A shareholder commits to adhere to the majority's will when they join a firm. The regulation really upholds the majority's authority to choose how the company's operations will be managed. Only the organization itself, acting consistently with its majority, and not a particular shareholder, may seek remedy if any wrong is done to the firm. Additionally, a business is a person in law; as such, it owns the action and cannot be initiated by a single stakeholder. The sole and legitimate plaintiff in any case where a corporate body is allowed to sue on its own behalf to recover property from its officers, directors, or any other person is that corporate entity.

FOLLOWING ARE THE ADVANTAGES OF THE RULE IN FOSS VS. HARBOTTLE CASE:

1. Need to protect the majority's decision-making authority: According to the ruling in *Foss v Harbottle*[28], the majority's decision-making authority is protected. It is just that the majority's desires should be fulfilled.

2. Avoiding several useless lawsuits: Clearly, there might be as many lawsuits as there are stakeholders if each individual member was allowed to bring a claim against anyone who had harmed the firm via a violation of duty. Legal processes would never end, wasting a great deal of money and time.

3. Avoiding several pointless lawsuits: It goes without saying that there may be as many lawsuits as there are stakeholders if each individual member were allowed to bring a claim against anyone who had harmed the firm via a breach of duty. Legal processes would never end, wasting a great deal of money and time.

4. Recognition of the corporation's distinct legal personality: If a company has been harmed,

[27] Supra
[28] [1843] 67 ER 189

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rather than the individual members, the company should seek restitution.

5. Minority lawsuit litigation is pointless if the majority opposes it: It is useless to file a lawsuit over an irregularity that can later be approved by the majority unless the majority in a general assembly agrees to it first. The articles in Mac Dougall v. Gardiner[29] gave the chairman the authority to adjourn a meeting with the approval of the meeting and also allowed for the holding of a poll if the shareholders so requested. A vote was then required and the chairman rejected it. The postponement was moved and then proclaimed to have been carried. A shareholder filed a lawsuit seeking a ruling that the chairman's actions were unlawful. According to the ruling, only the corporation may file a lawsuit if the chairman made a mistake[30].

CHAPTER 4: AN EXAMINATION OF THE BEST LEGAL PROCEDURES IN EACH COUNTRY FOR DEFENDING THE RIGHTS OF MINORITY SHAREHOLDERS.

EXCEPTION TO THE RULE IN FOSS V. HARBOTTLE

The majority supremacy does not, however, always win out. *Foss v Harbottle*[31] rule is applicable in situations where businesses have the authority to approve managerial transgressions. However, a majority of shareholders cannot accept or confirm certain actions. In such circumstances, each and every stakeholder may file a lawsuit to enforce the company's debts. He presents the acts in his capacity as an agent for the business. A collective action of this type is known as a “derivative action”[32] in American literature.

01) **Illegal and Ultra Vires Acts :-** When the act complained of is ultra vires the corporation[33], the decision in Foss v. Harbottle does not apply because even a unanimous vote of the stakeholders cannot ratify such an act. In these situations, it appears that the plaintiff

[29] (1875) 1 Ch. 13 (C.A)
[30] Supra note 8
[31] (1843) 2 Hare 461: 67 ER189.
[32] A.J.Boyle,"The Derivative Action in Company Law" (1969)
[33] Edwards v. Halliwell [1950] 2 All ER 1064, 1067

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stockholder may file a personal action based on the business's violation of its memoranda or a derivative action based on the harm done to the organization by those who forced it to act outside of its authority[34].

02) The complainant may file an individual or class action against the company, and the directors may be added as co-defendants so that an injunction may be made against them as well, if a complaining member seeks an order that the organization shall recover compensation for an ultra vires act that has already occurred, or shall recover property disposed of by an ultra vires transaction[35].

03) In authority of *Bharat Insurance Co. Ltd. Vs. Kanhaiya Lal*[36], The Hon'ble Court held that as the company is the best judge of its own business, the court should stay out of the matter. However, the usage of assets owned by an organization extends beyond straightforward internal management. It is alleged that the directors broke the law by utilising the company's cash. In certain circumstances, an individual may launch a lawsuit to get a statement on the precise composition of the in dispute item.

02) Fraud on Minority:

A single shareholder may impeach the actions of a majority of a company's members if they use their influence to cheat or mistreat the minority[37]. However, it must entail an unjustifiable use of the majority's authority that results in or is likely to result in financial loss or unjust or discriminating treatment of the minority. Discrimination or fraud need not constitute a tort under common law. A decision amending the company's memorandum or articles must also be more severe than the majority's failure to act with the best interests of the business as a whole for the court to declare it invalid[38]. Fraud is defined as any circumstance where the wrongdoers "are attempting, either explicitly or implicitly, to appropriate to themselves money, property, or

[34] Simpson v. Westminster Palace Hotel Co. [1897] 2 QB 124.
[35] Taxman
[36] Bharat Insurance Co. Ltd. Vs. Kanhaiya Lal, AIR 1935 Lah 792
[37] Edward v. Halliwell [1950] 2 All ER 1064
[38] Pennington's Company Law, 5th Edition, Page 734.

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advantages which belong to the organization or in which the other stakeholders are entitled to participate." The majority's authority must be used honestly and in the best interests of the whole business. If they are not so exercised, there has been a "fraud on the minority"[39]. The phrase "benefit of the company as a whole" appears to have been lifted from the ruling by Lindley MR in *Allen v. Gold Reefs of West Africa Ltd.*, where he said: "The authority for altering articles must, like every other authority, be utilized subject to those fundamental tenets of equity and law which are applicable to all powers granted on the majority and allowing them to bind minorities. It must be used "bona fide" and for the benefit of the whole organization[40]. The Supreme Court declared in *Brown v. British Abrasive Will Co.* that the minority shareholders' rights could not be taken away by the majority and that the alteration of the articles may be prohibited.[41]

3) Acts requiring special resolution:

Only a general gathering of stakeholders that passes a particular resolution may carry out such acts. Therefore, if the majority plans to carry out any such act by passing just an ordinary resolution or without adopting special resolution in the manner required by law, any member or members may bring an action to restrain the majority. In the cases *Dhakeswari Cotton Mills Ltd v. Nil Kamal Chakravorty* and *Nagappa Chettiar v. Madras Race Club*, such proceedings were permitted[42]. A specific resolution is required, for instance, if the registered office is moving from one city to another. However, if it is accomplished by a regular resolution, the minority may decide to file a lawsuit.

4) Wrongdoers in control :-

The majority of the shareholders might decline to enable legal action to be taken against the perpetrator, even though the business has been manifestly injured. In some circumstances, any shareholder or member may initiate a lawsuit on the company's behalf to safeguard the interests of the business[43]. This was recognized in *Foss v Harbottle*[44] itself: “One cannot help but believe that

[39] Lord Davey, in Burland v. Earle [1902] A.C. 83
[40] Lindley MR in Allen v Gold Reefs of WestAfrica Ltd. (1900) 1 Ch 656,671 (CA)
[41] Brown vs. British abrasive will Co., (1919) 1 CH. D 29
[42] (1949) 1MLJ 662
[43] VP Singh v Metropolitan Council of Delhi, AIR 1969 Del 295
[44] (1843) 2 Hare 461: 67 ER189

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the principle so forcefully outlined by Lord Cottenham in Wallworth vs. Holt[45] and other cases would apply, and in the event that a corporation is harmed by some of its members and there is no other viable course of action, the corporators may file a lawsuit in their individual capacities, seeking to protect the rights to which they are legally entitled under the company's legal personality."

5) Individual membership rights:

The only privileges to which the majority rule notion applies are the privileges of membership in the corporation that a member enjoys. If a member's personal rights, such as the ability to vote and the right to dividends, are infringed, they are nevertheless permitted to continue under their own names. Individual personal rights are granted to each shareholder against the company and his fellow shareholders. The majority of these rights were provided to shareholders by the Act, however some may also be derived from the charter of organization. These rights, which are more often known as "individual membership rights" since they are honored, are not subject to the rule of majority. "If a privilege like this is in question," Palmer stated, "an individual shareholder can, on fundamental nature, defy an overwhelming majority consisting of all the other stockholders."[46]. For instance, the court said in *Nagappa Chettiar v. Madras Race Club*[47] that " a shareholder has the right to defend their individual rights against the corporation, including their right to vote, their right to have their vote recorded, and their right to vote or run for office as a director of the firm."

6) Oppression and mismanagement:

if the controlling shareholder has conducted improper business. In such cases, the majority rule will not apply, and oppressive mismanagement may be stopped by filing a lawsuit by minority shareholders. In *Kanika Mukherji v. Rameshwar Dayal Dubey*[48], Sinha J. of the Calcutta High Court ruled that the fundamental tenet of the sections of the Companies Act that prevent oppression and mismanagement is an exemption to the rule in Foss v. Harbottle that establishes the inviolability of the majority rule[49].

[45] (1841) 4 Mycle &Cr 635:41 ER238
[46] Palmer's Company Law (20th Edn.) 492
[47] (1949) 1 MLJ 662, 667: ILR1949 Mad 808.
[48] (1966) 1 Comp LJ 65
[49] Jones v. HF Ahmanson& Co, 81 Cal Rptr 592

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CHAPTER 5: ISSUES AND CHALLENGES ASSOCIATED WITH PROTECTION OF MINORITY SHAREHOLDERS RIGHT IN INDIA.

Only when the dominant shareholders recognize their legal responsibilities to all stakeholders and that they should discuss the minority stakeholders before making decisions can the best interests of the minority shareholders be really safeguarded.

A well-known concept in corporate law is shareholder democracy, which includes the rule of majority as stated in *Foss V. Harbottle*. This norm is still in effect, and courts often avoid interfering with internal management when a company is doing business legally. Addressing the concerns of minority shareholders while properly taking into consideration the wishes of the majority shareholders remains a significant point of debate in the context of contemporary corporate governance. This is due to the fact that disputes between majority and minority shareholders often arise throughout a company's management and operation. Despite contractual and legal protections for the minority shareholder, who holds more than fifty percent of the voting rights, the controlling shareholder effectively governs the business.

Controlling owners often make choices that are not in favor of the minority shareholders. This involves soliciting existing customers and suppliers as well as conducting unauthorized related party transactions, diverting corporate cash, starting a new business, and creating a new one. Additionally, it entails paying out large salaries and other benefits to the directors and other personnel picked by the controlling owners as well as purposely reinvesting revenues to prevent minority shareholders from receiving returns.

The Companies Act of 2013 now includes a variety of provisions that safeguard the interests of minority shareholders. If they feel that these concerns are being handled unfairly to them or other shareholders, minority shareholders have the right to apply to the National Company Law Tribunal for an investigation into the company's activities. Even while the goal of these procedures is to protect the rights of the minority shareholders, actually implementing them remains challenging.

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Due to the fact that the majority owners continue to control the company's management, it is possible that the minority shareholders won't have practical access to sufficient evidence, such as information, accounts, or records, to support their claim of wrongdoing.

Additionally, the 2013 Companies Act's remedies are still being examined for efficacy, and traditionally, litigation-based remedies have proven to be costly and time-consuming. In addition, the stakeholder who makes the claim is responsible for covering the whole expense of the legal procedures; yet, the shareholders only gains an indirect benefit that is proportional to the success of the claim.

Promoters, who are often the main owners in a firm, provide investors specific contractual rights when they buy a minority position in it. These legally enforceable rights, which are often outlined in the shareholders' agreement (or "SHA"), typically include the right to proportionate board participation, the power to veto certain acts, and access to records and information. Although these rights are crucial to protecting the best possible interests of minority investors, the promoters continue to have control over the firm's administration, and no one can complain to bad management choices. The promoter's authority to choose the majority of directors thus essentially voids the entitlement to board representation. Minority shareholders may utilise their veto power as an offensive strategy to oppose certain company decisions, albeit they do not always have an affirmative right to control management.

The SHA also limits minority investors' access to information and inspection rights to certain types of records, including statutory records, periodic filings, and books of account; in certain cases, these rights deny the investor access to evidence that could be required to detect fraud.

The SHA also grants exit rights to the minority investors. Minority investors' exit powers typically end up existing just on paper since the SHA is seldom completely implemented in reality. The promoter's desire and financial capacity are required for a departure, and the only recourse that exists in the event that the sponsor violates its commitments under the SHA is a drawn-out dispute resolution procedure. Minority investors may find it difficult to withdraw if the promoter and they

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do not get along. If the business is struggling, finding a third party buyer becomes considerably more difficult. In many circumstances, a minority investor may only be able to watch helplessly while the organization's value declines.

The majority's power violates shareholder democracy by ignoring the investments made by minority shareholders. The absolute majority rule, as outlined in *Foss v. Harbottle*, cannot be automatically applied in India, and the breach of fiduciary responsibility by dominating shareholders would entitle minority owners to seek redress from the dominant shareholders, in accordance with judicial precedents. The shareholders in control must refrain from making any hidden profits from the company, disclose all material information, exercise their authority in a reasonable and equitable manner for the benefit of the company, and refrain from abusing their position unfairly or fraudulently, according to judicial precedents, even though the current regulatory system does not expressly state their fiduciary responsibilities.

The Securities and Exchange Board of India recognized the fiduciary duty owed by the controlling shareholder to the minority shareholder in a 2012 consultative paper on the review of corporate governance standards in India. The board also recommended that the dominant shareholders of publicly traded enterprises enter into relationship agreements with the publicly traded company and the minority shareholders that would specify their obligations. The dominant owners' fiduciary obligation to the minority shareholders has long been established in many nations with developed capital markets.

When the dominant shareholders understand their legal responsibilities to all shareholders and that they should consult the minority shareholders before making decisions, only then can the interests of the minority shareholders be really safeguarded. Minority owners should be given an equal chance to resolve their disputes, according to controlling shareholders. The board must use a more sophisticated approach, aiming to maintain the firm's worth rather than meeting the needs of the shareholders who own the business.

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CHAPTER 6: JUDICIAL RESPONSES ON MINORITY RULE AND MINORITY RIGHTS

The majority always rules in a corporate democracy. Therefore, shareholder resolutions may be approved by a simple majority in most countries or by a super/special majority of at least three-fourths if the choice may have a significant impact on the operations or future of a firm. All members and investors are bound by the majority decision in this instance.

Insofar as the corporation's, the majority shareholders', and the minority shareholders' interests are all aligned, this is all well and well. But when a powerful promoter or management group just thinks about (or is seen to be thinking about) its own gain, to the cost of the firm and/or the minority shareholder(s), an executive room and shareholder standoff may happen. What choices are there when the majority of the management of the firm mismanages it to the disadvantage of both the company and its minority stakeholders?

One of the main motivations for the Companies Act, 2013, which enhanced procedures to guarantee that the majority's influence is not abused via tyranny of the minority and poor management of the firm, is shareholder protection. These steps guarantee that the existing power structure remains intact and that minority' interests are safeguarded.

The original Companies Act of 2013 provided protection against majority mismanagement and exploitation, as well as the ability to wind up the problematic corporation if it was deemed to be fair and reasonable to do so. Even if the firm was otherwise bankrupt, the cure of closing it down completely ended the abuse and bad management. The dissolution also had an effect on the minority investors, who were the remedy's intended beneficiaries.

However, if courts were convinced that a winding up decision would not be fair, they might "make such order in relation thereto as it thinks fit[50]" under the Indian Companies (Amendment) Act, 1951, to stop the tyranny of the majority.

[50] *Section 153C was inserted in Indian Companies Act, 1913 by the Indian Companies (Amendment) Act, 1951*

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The Companies Act of 1956[51] (the "1956 Act") gave the previous Company Law Board ("CLB") wide jurisdiction to provide protection and reparation for minority owners by dividing mismanagement and opresssion remedies into separate clauses.

The Companies Act, 2013 (the "2013 Act"), which among other things combined the provisions relating to oppression and mismanagement as well as the Central Government's ability to apply for redress in the public interest[52], preserved the test for it being otherwise fair and just to wind up the company in question, and fundamentally altered India's corporate law framework.

The 2013 Act also consolidated all corporate jurisdiction into a single body, abolishing the CLB and establishing the National Company Law Tribunal ("NCLT")[53] and National Company Law Appellate Tribunal ("NCLAT")[54]. The NCLT/NCLAT were created with the intention of centralising, simplifying, and assisting with the rapid settlement of business issues. Concerns about oppression, bad management, and unjust bias claims are not arbitrable in India as a result of this ban on civil court jurisdiction and arbitration[55] (despite being arbitrable in other countries like Singapore and England and Wales).

REMEDIES AGAINST OPRESSION, MISMANAGEMENT AND PREJUDICE

The 2013 Act's Sections 241-246 (subject to a minimum quota being met) provide assistance and security to members of a company against inequality, poor management, as well as actions by the majority or management of a company that are harmful to the interests of the company or the public interest.

If the NCLT concludes after evaluating an application that the circumstances justify the winding-up of the business on just and reasonable basis but that such an order wouldn't be entirely fair[56], it may make whatever decisions it deems appropriate to put an end to the objections presented. The

[51] *Section 397 and Section 398 of the Companies Act, 1956*
[52] *Section 241 of the Companies Act 2013 (Application to the Tribunal for relief in cases of oppression, etc.)*
[53] *Section 408 of the Companies Act 2013 (Constitution of National Company Law Tribunal)*
[54] *Section 410 of the Companies Act 2013 (Constitution of Appellate Tribunal)*
[55] *Section 430 of the Companies Act 2013 (Civil Court not to have jurisdiction)*
[56] *S.P. Jain v. Kalinga Tubes Ltd. AIR 1965 SC 1535*

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NCLT has extensive power in this matter.

OPPRESSION

When a corporation's operations are conducted against the interests of the public or the company, or when a few members are subjected to unjust treatment, oppression has taken place[57]. Unless the abuse involves a shareholder nominee or appointed director and is thus relevant to the shareholder himself, there would be no remedy under this section for abuse of a person operating in a capacity other than that of a member, such as a director.

In S.P., the Supreme Court outlined the criteria used to define oppression. More than 50 years ago, in Jain v. Kalinga Tubes Ltd[58]., it was decided that behaviour involving a lack of probity or fair dealing with a member in regards to his property rights as a shareholder must be oppressive, severe, and illegal. Furthermore, unless a minority shareholder was being oppressed by the majority in the management of the company's activities, a mere lack of trust between the minority and majority shareholders would not be adequate.

These concepts were developed upon and used in different situations. Needle Industries India Ltd. v. Needle Industries Newey (India) Holdings Ltd[59] was decided by the Supreme Court. So unless it is done with malicious intent or is extremely severe, onerous, and illegal, illegal behaviour won't be seen as oppressed in and of itself. However, if several crimes have been committed against the same individual, it would be reasonable to assume that they are all part of the same oppressive target. The Needle Industries case was mentioned by the Supreme Court in the V.S. Westfort Hi-Tech Hospital Ltd. v. Krishnan[60]. They came to the conclusion that the criteria for evaluating whether or not an action is oppressive, whether it is illegal but rather if it involves a lack of integrity, good moral character, or a conduct that was malicious, severely onerous, incorrect, or for a secondary aim. Additionally, it was said that although the eventual aim of such an action could be in the best interests of the corporation, the immediate goal would favour certain

[57] *Section 241(1)(a) of the Companies Act, 2013*
[58] *AIR 1965 SC 1535*
[59] *1981 3 SCC 333*
[60] *2008 3 SCC 363*

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stakeholders more than others.

These events show how a single act may not satisfy the criteria for tyranny. Typically, if numerous/continuous actions by the majority shareholders persisted up to the petition date, it would be shown that the business operations were being conducted in an oppressive manner[61]. However, this is only a standard of reasonable judgement that judicial bodies have established to avoid fruitless litigation so that a group of irate shareholders won't interfere with the business as usual by complaining about every little or isolated act of tyranny. It was deemed oppressive to give a single member additional shares at a meeting without following the law and without also offering them to other members on a pro rata basis[62]. However, even a single, heinous act of oppression may still be taken into consideration[63], particularly if its effects are long-lasting and the affected members are completely devoid of any significant rights or privileges[64].

Using the same illustration, even if the oppressive conduct complained of was more severe, it is not necessary for gaining protection that it was unlawful. The remedy may still be applied even though the conduct is legitimate[65]. Even if such action is entirely legal, such as an allocation of shares where the distribution lowered the petitioners to a weak minority, it would nevertheless be seen as oppressive[66]. Similar to this, measures that are legal but may be outlawed for being unjust include rights disputes brought about specifically to lower minority holdings, preferential distributions to certain shareholders at significant discounts, etc. However, if the share distribution or issuance was legal and in the company's best interests, oppression won't happen even if it unintentionally leads to the majority shareholders losing control of the corporation or becoming a minority[67].

[61] *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad (2005) 11 SCC 314*

[62] *K. Muthusamy v. S. Balasubramanian 2011 SCC OnLine Mad 256*
[63] *Tea Brokers Pvt. Ltd. v. Hemendra Prosad Barooah, [1998] 5 Comp LJ 463*
[64] *Bhagirath Aagarwala v. Tara Properties P Ltd. (2002) 111 Comp Cas 597*
[65] *Needle Industries India Ltd. v. Needle Industries Newey India Holdings Ltd. 1981 3 SCC 333*
[66] *Rajendra Kumar Tekriwal v. Unique Construction Pvt Ltd. (2009) 147 Comp Cas 737 (CLB)*
[67] *Needle Industries India Ltd. v. Needle Industries Newey India Holdings Ltd. 1981 3 SCC 333*

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Exemplary instances of oppression include neglecting to support the appointment of the managing director despite the shareholders' agreement's management management terms being broken[68].

MISMANAGEMENT

The word "mismanagement" is used to indicate treatment of a company's operations that is seriously damaging to its interests[69]. By include changes that are harmful to shareholders or any class of shareholders, the 2013 Act extended the definition of a change. The following scenarios may occur: (a) the use of public money for improper or unwanted goals, which would seriously impair the company's finances[70]; (b) gross negligence in managing business difficulties; and (c) inactivity[71].

Whether as a consequence of a change in the company's membership, the board of directors, the manager, or the ownership of the firm's shares, a major change in the management or control of the organization may give rise to a mismanagement charge. This change results in the actual mismanagement of the business or the danger that its affairs will be managed in a way that is detrimental to the interests of the company, its shareholders, or any class of shareholders[72].

Relief will only be granted if it can be shown that the change will cause the company's affairs to be managed in a manner that is harmful to the public interest or the company's interests[73].

Poor management practises include selling the company's assets at a bargain while breaching the law, which results in the loss of the company's foundation or ability to operate[74]. Poor management, however, cannot simply be characterised as making bad or unsuccessful business choices, etc.

PRE-JUDICIAL ACTS

According to a new clause in the 2013 Act, Members now have remedies against a company

[68] *Vikram Bakshi v. Connaught Plaza Restaurant Ltd. 2017 SCC Online NCLT 560*
[69] *Section 241(1)(a) of the Companies Act, 2013*
[70] *K.R.S. Mani & Ors. v. Anugraha Jewellers Limited & Ors., (2000) 100 Comp Cas 665 (CLB)*
[71] *Chander Krishan Gupta v. Pannalal Girdhari Lal Private Ltd., 1981 SCC OnLine Del 327*
[72] *Surinder Singh Bindra v Hindustan Fasteners Pvt Ltd. 1990 69 Comp Cases 718 , 726 Del*
[73] *Jodh Raj Laddha v. Birla Corporation Ltd. C.P. 57 of 2004 CLB (unreported)*
[74] *Malyalam Plantation India Ltd Re 1991 5 Corpt LA 361 Ker; AIR Asia Ltd. Re 1994 3 Comp LJ 294 (CLB)*

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conducting its operations in a manner that is harmful to their interests.

Indian courts have not yet offered a meaning of the term "prejudicial to the interest of its members or any class of members" in the context of corporations since it is a relatively new concept. A prejudiced conduct is one that has an adverse effect on the petitioning shareholders' interests, as described by Black's Law Dictionary by "prejudice" as "unfairly disadvantageous; inequitably detrimental" and "prejudicial" as "tending to harm, injure or impair; damaging or hurtful[75]." For instance, the R.N. case was decided by the Andhra Pradesh High Court in Deccan Enterprises Pvt. Ltd[76], the petitioners shareholders' interests were harmed by the single action of issuing extra shares with the express intent of altering the ownership pattern in the benefit of certain shareholders and subsequently changing the composition of the board of directors. Given that the company was profitable (and that ordering its dissolution would not be appropriate in this case), the court hired an interim administrator or special officer to take over and manage the company's affairs in place of the board of directors.

JUST AND EQUITABLE GROUNDS FOR WINDING UP OF A COMPANY

The applicants must show that it would be fair and reasonable to wind up the firm in question as a result of such acts, but that the issuing of such an order would unfairly disadvantage them in order to be eligible for relief for oppressive, negligent, or other detrimental behavior[77].

The loss of the company's operational foundation, functional paralysis, and utter lack of faith in the conduct and management of the company's affairs are recognized as the reasons for a winding up on fair and just terms (rather than just a lack of confidence between the majority and minority shareholders[78].

Mr. Cyrus Mistry was stripped of his responsibilities as Executive Chairman of Tata Sons Limited and directorships in other businesses within the Tata Group by resolutions approved at several

[75] *Bryan A. Garner (editor in chief), Black's Law Dictionary (11th edn., 2019).*
[76] *R.N. Jalan v Deccan Enterprises Pvt. Ltd, (1992) 75 Comp Cas 417, paragraph 26*
[77] *S.P. Jain v. Kalinga Tubes Ltd. AIR 1965 SC 1535*
[78] *Hind Overseas P Ltd. v. Raghunath Prasad Jhunjhunwalla 1976 3 SCC 259*

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board and shareholder meetings in the matter of *Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd*[79]. minorities Cyrus Investments Pvt. Sterling Investment Corporation Pvt. Ltd. Ltd. (shareholders of the Tata Group of Companies, in whom Mr. Mistry had a majority position), believed that the removal and the way it was conducted were oppressive. So they complained about poor management, discrimination, and prejudice to the NCLT. The minority group lost in the NCLT's decision. The NCLAT found in favor of the minority group, stating that Mr. Mistry's removal from his positions as Executive Chairman of Tata Sons and as a Director of several businesses was oppressive and discriminatory. As a result, it required Mr. Mistry's rehabilitation. When Tata Sons appealed the NCLAT decision, the Supreme Court overruled it, concluding that Mr. Mistry's termination as executive chairman of Tata Sons was not repressive nor harmful to the interests of the minority group.

The court also pointed out that the case's factual matrix did not satisfy the requirement for validating the company's dissolution. The "just and equitable clause" is only used in certain situations, such as

(a) where there is a functional deadlock—a failure of members to cooperate paralyses the business from functioning—and

(b) when there is a legitimate loss of trust in the behaviour of the directors. Minority shareholders would not be justified in placing less trust in management than the majority of shareholders.

The NCLAT's finding that it was fair and reasonable to wind up Tata Sons was incorrect since charity Trusts, not persons or businesses, controlled the bulk of the shares of Tata Sons (Private) Limited. If Tata Sons were to be dissolved, these trusts would starve to death.

NUMERICAL THRESHOLD

An oppression, mismanagement, or prejudiced conduct claim must be maintained before the NCLT by a member who owns at least 10% of the "issued share capital of the company" or 1/100th of its entire membership, whichever is less. In the alternative, the member must own at least 1/5 of the whole membership if the firm does not have a share capital[80]. This protects the majority

[79] *Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd., 2021 SCC OnLine SC 272*
[80] *Section 244 of the Companies Act, 2013*

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against obnoxious litigation brought by minuscule minority.

However, if required, the numerical criterion may be disregarded. When it decided that the minority group may keep suing even if its membership fell below the 10% threshold, the NCLAT did so in the Tata Sons case[81]. The NCLAT concluded that if unusual circumstances were shown to exist (which it judged to be the case in that instance), it may grant a "waiver" and proceed with the application. For instance, if the applicant(s) have a sizable stake in the company, there is a fragmented minority shareholding cluster, and the oppressive act for which the waiver is requested has reduced the number of members below the 10% threshold, the waiver will be granted even though the applicant(s) do not meet the 10% requirement.

In order to avoid the filing of frivolous lawsuits, the NCLT is permitted to examine an action via a smaller but adversely affected minority shareholder group while still maintaining this criterion.

THE GRANT OF RELIEF

The NCLT/NCLAT has been given broad latitude to impose remedies to protect minority interests in order to "bring closure to the matters complained of." To do this, the NCLT is allowed to interfere in the administration of the business for the benefit of minority shareholders or the firm, including by appointing new management and overseeing the company's activities. To temporarily or permanently assume control of the firm, the NCLT may propose candidates for the board of directors, name administrator(s), a special officer, or a committee of advisers[82]. The Cyrus Mistry case, decided by the Supreme Court, made clear that this expansive authority is not absolute or limitless, and it most definitely does not include the power to force the reinstatement of a director or officer[83]. The Court therefore overturned the NCLAT's decision to reinstate Mr. Mistry as the Executive Chairman of Tata Sons on the grounds that it lacked legal backing and had no basis in the pleadings.

[81] *Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd. SCC OnLine NCLAT 261*
[82] *Bennet Coleman & Co. v. Union of India and Ors. 1977 47 Com Cases 92*
[83] *Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd., 2021 SCC OnLine SC 272*

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The 2013 Act protects the rights of minority shareholders in Indian businesses by empowering the NCLT to provide a variety of reliefs to address oppression, management issues, bias allegations, and minority interests. Even while it may seem challenging to show that the business in question should be shut down, doing so strikes a balance between the interests of the minority and the majority as well as the corporation to achieve genuine justice.

CHAPTER 7:CONCLUSIONS AND SUGGESTIONS

The dialogue makes it clear that in a company, just as in a democratic country, choices are made and backed by the majority. Similar to how a democratic country would safeguard its minority shareholders when the majority breaches their rights, corporate law does the same. However, in corporate matters, the size of an individual's shareholding is significant and if one individual holds the majority of the shareholding and votes in favor of a scheme of arrangement, that decision will be binding on numerous people who make up the minority, even though their shareholding amounts to a much smaller percentage than the majority shareholding of a single person. The Court will not intervene at the request of shareholders in internal administrative matters, and it won't get involved with a company's management by its directors so long as they are acting in compliance with the power granted to them by the company's articles of incorporation, according to the rule established in Foss v. Harbottle. One may argue that the decision in the *Foss v. Harbottle* case is a logical extension of the notion that a company is a separate legal person. The majority rule suppressed minority shareholder voices under the previous statute from 1956, but under the current law—the 2013 Companies statute—different procedures have been put in place to protect minority shareholders' rights in the organization. The Companies Act of 2013 (the "Act") provides appropriate protection for the rights of Minority Shareholders in the Company.

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